IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.946 OF 2004

M/s.Tupe-Vidhate-Ghule Associates)..Appellants

versus

Hafiza Ibrahim Khan (Nalband) & ors.)..Respondents

Mr.S.M.Gorwadkar for the Appellants.

Mr.Girish Godbole with Mr.R.D.Darve for Respondent Nos.1 to 12.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 2ND NOVEMBER 2004

P.C. :

. This Appeal From Order has been filed against the order dated 20th September 2004 by which Defendant No.1 i.e. the Appellants herein are restrained by a temporary injunction from carrying out commercial construction on the first floor of the proposed construction of the building on the suit property in accordance with the sanctioned plan of the Pune Municipal Corporation.

2. It appears that a development agreement was entered into between the Appellants who are the developers and Respondent Nos.1 to 12. The Plaintiffs i.e. Respondent Nos.1 to 5 and Defendant Nos.2 to 8

i.e. Respondent Nos.6 to 12 are co-owners of the suit property. It appears that after the sanctioned plans were received, construction has been commenced. Under the agreement, it was agreed that the developer would give about 1500 sq.ft. area to the Respondents as residential premises in the residential zone. The dispute has arisen because, according to the Appellants, the residential zone commences only from the second floor whereas the commercial zone includes the parking area, lower ground floor and upper ground floor and the first floor. The Plaintiffs have claimed that the residential zone is situated on the first floor.

3. The controversy in this Appeal can be put at rest by accepting the statement made by Mr.Gorwadkar, under instructions from his clients, that an area of 1500 sq.ft. on the first floor will be kept vacant for the respondents facing the Pune-Solapur Road. Mr.Gorwadkar states that the Appellants will not transfer and/or alienate these premises in any manner or create any third party rights or interest in these premises, during the pendency of the Suit.

4. The statement of Mr.Gorwadkar is accepted. Appeal From Order disposed of accordingly.

5. It is clarified that the construction activity

which the developer has undertaken can be continued as per the sanctioned plans.

6. In view of the disposal of the Appeal From Order, nothing survives in Civil Application No.1298 of 2004 and the same is disposed of accordingly.

7. Parties may be provided authenticated copy of this order.